

GLENN T. NORTON

IBLA 74-200

Decided June 28, 1974

Appeal from letter decision of the Alaska State Office, Bureau of Land Management, requiring appellant to pay appraised value of \$5,000 for Small Tract A-047659.

Affirmed.

Administrative Practice—Federal Employees and Officers: Authority to Bind
Government—Appraisals— Small Tract Act: Appraisals—Small Tract Act: Generally

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

Appraisals—Small Tract Act: Appraisals

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

APPEARANCES: Warren C. Colver, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Glenn T. Norton has appealed from a decision, dated January 3, 1974, of the Alaska State Office, Bureau of Land Management, informing him that an appraised fair market value of \$5,000 was correct for lot 16, sec. 32, T. 17 N., R. 4 W., S.M., which had been classified for direct sale to appellant under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. §§ 682(a)-682(e) (1970). Appellant maintains that the \$5,000 appraised valuation is incorrect.

In 1960, appellant was issued a five-year renewable lease and lease only to lot 16 pursuant to Small Tract Classification Order No. 292-NC. Appellant was not issued a lease with option to purchase because he had previously patented a small tract for homesite purposes and could not acquire another small tract due to the Department's anti-speculation policy which stated in part that no applicant could obtain title to more than one small tract and that all pending applications for lease and purchase of a second small tract had to be denied or processed for lease only.

On July 23, 1963, appellant requested that he be allowed to purchase the subject tract. In a letter dated August 22, 1963, the Alaska State Office informed appellant that the Department's anti-speculation policy was no longer in effect and that appellant could request that the classification order be amended to permit direct sale after a reappraisal of the tract. In a response dated January 2, 1964, appellant requested that the tract be reappraised and offered for direct sale.

On September 2, 1971, following a report by the State Reviewing Appraiser recommending reclassification and direct sale, Small Tract Classification Order No. 292-NC was amended to permit direct sale of lot 16 to appellant. The amendment stated that "[d]irect sale will be made at the current Fair Market Value to be determined by appraisal." Appellant's tract was thereafter appraised at a value of \$5,000, the effective date of appraisal being August 17, 1972. The appraisal was approved on December 7, 1972, by the chief appraiser.

In his statement of reasons in support of appeal, appellant argues that at the time he requested to purchase the property in 1963, it had already been appraised at an approximate value of \$360. Appellant urges that the appreciation in value which occurred between 1963 and the Department's reappraisal of the tract in 1972 should not be borne by the appellant as,

the Bureau of Land Management cannot arbitrarily delay making appraisals on parcels of land for an unlimited time and place the burden of such failure of performance on the purchaser.

Appellant requests a hearing on this appeal.

This case is on all fours with our recent decision Eugene G. Roguszka, 15 IBLA 1 (1974). The facts in both cases are almost identical. In 1965 Roguszka was informed by the Alaska State Office that the anti-speculation policy of the Department was no longer in effect and that he could therefore request that his small tract classification order be amended to permit direct sale. Roguszka's tract was also appraised as of August 17, 1972, and thereafter

approved on December 1, 1972. Roguszka also argued that the Bureau of Land Management had abused its authority in failing to reappraise the tract within a reasonable time. We responded to that argument as follows:

[T]he record indicates that the Alaska State Office had a considerable backlog of work during the relevant period of this case and the staff was insufficient to handle the heavy burden. Memoranda within the record indicate that additional assistance was requested from Washington personnel to handle the large workload faced by the Alaska Office. * * * Furthermore, memoranda within the record indicate that some field appraisal work had to be delayed due to adverse weather conditions.

Eugene G. Roguszka, *supra* at 7-8. The record in the present case indicates that the exact same personnel problems were faced by the State Office with respect to appellant's case. Memoranda in the record indicate that, along with Roguszka's case, appellant's case was cited in the backlog of work used to justify the request for additional personnel assistance. As we stated in Roguszka, *id.*:

It is regrettable that substantial administrative workloads often result in burdensome delays. However, an applicant for public land cannot acquire any right in the land by virtue of administrative delay. Charles Schraier, A-30814 (November 21, 1967), *aff'd*, Schraier v. Udall, 419 F.2d 663, 667-68 (D.C. Cir. 1969); Joseph J. Miller, A-30681 (May 3, 1967); Jack T. Lofstrom, Leotha Marie Stone, A-29470 (November 15, 1964); Elizabeth Sauer Dreves, A-29292 (July 23, 1963); Kenneth W. Swallow, A-28975, 28976 (August 6, 1962); Richard K. Todd, 68 I.D. 291, 297 (1961), *aff'd sub nom. Duesing v. Udall*, 350 F.2d 748 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 912 (1966).

As was correctly pointed out in the State Office decision, the mere filing of a small tract application does not create in the applicant any right or interest in the land. See Eugene G. Roguszka, *supra* at 6; Charles Leonard Short, A-28994 (September 21, 1962). An applicant for a small tract is required to pay a purchase price which reflects the current appraisal of the fair market value of the land at the time sale commitment is made. Eugene G. Roguszka, *supra* at 9; Henry Offe, A-29060 (December 10, 1962); Kenneth Swallow, *supra*. The State Office decision states that the \$5,000 appraisal valuation reflects fair market value at the time the land was reclassified for direct sale. Appellant has made no claim that the State Office's 1972 appraisal figure is inaccurate. Having examined the appraisal

report in the record, we find it to be in conformity with Department standards. Accordingly, as there is no evidence that the appraisal is in error, it will not be disturbed.

The dispositive issues herein being issues of law rather than fact, the request for a hearing is denied. 43 CFR 4.415.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

